

polito trial transcript 11-21-03  
10 A. Yes.

11 Q. Who was he?

12 A. Donnelly was seeing cases of asbestosis in -- he  
13 reported seeing a number of cases in the Carolinas and reported  
14 this in medical journals, and urged greater efforts to protect  
15 asbestos workers.

16 MR. THACKSTON: Your Honor, I will object to the  
17 responsiveness.

18 THE COURT: I will strike the last part about  
19 urging greater efforts.

20 Q. In what publication did Dr. Donnelly publish his work.  
21 if you recall?

22 A. I don't recall off the top of my head.

23 Q. Okay. In 1933, did Merewether publish again?

24 A. Yes, he did, he published a several part article  
25 called a memorandum on asbestosis.

U

1 DR. CASTLEMAN - DX BY MR. LONG 548

2 Q. Where did that appear?

3 A. British journal called Tubercle. The article was  
4 widely cited in subsequent literature on asbestos disease.

5 Q. In that 1933 publication, did Dr. Merewether make any  
6 reference to brake linings?

7 MR. THACKSTON: Objection.

8 THE COURT: Grounds?

9 MR. THACKSTON: Hearay.

10           A.    polito trial transcript 11-21-03  
11           Q.    Who was he?  
12           A.    Donnelly was seeing cases of asbestosis in -- he  
13   reported seeing a number of cases in the Carolinas and reported  
14   this in medical journals, and urged greater efforts to protect  
15   asbestos workers.  
16           MR. THACKSTON: Your Honor, I will object to the  
17   responsiveness.  
18           THE COURT: I will strike the last part about  
19   urging greater efforts.  
20           Q.    In what publication did Dr. Donnelly publish his work,  
21   if you recall?  
22           A.    I don't recall off the top of my head.  
23           Q.    Okay. In 1933, did Merewether publish again?  
24           A.    Yes, he did, he published a several part article  
25   called a memorandum on asbestosis.

1                   DR. CASTLEMAN - DX BY MR. LONG                   548  
2           Q.    Where did that appear?  
3           A.    British journal called Tubercle. The article was  
4   widely cited in subsequent literature on asbestos disease.  
5           Q.    In that 1933 publication, did Dr. Merewether make any  
6   reference to brake linings?  
7           MR. THACKSTON: Objection.  
8           THE COURT: Grounds?  
9           MR. THACKSTON: Hearsay.

polito trial transcript 11-21-03

10 THE COURT: Sustained.

11 Q. You told us that in 1930, Dr. Merewether published an  
12 article, and part of what he had investigated at that time was  
13 dust arising from the use of brakes; is that correct?

14 MR. THACKSTON: Objection, leading.

15 THE COURT: I'm sorry?

16 MR. THACKSTON: Leading, form.

17 THE COURT: Sustained.

18 Q. In addition to what you have told us already, Doctor,  
19 what topics did Dr. Merewether include in his 1933 publication  
20 on asbestos and asbestos-related disease?

21 MR. THACKSTON: Objection.

22 THE COURT: Grounds?

23 MR. THACKSTON: Hearsay, for one.

24 THE COURT: Sustained.

25 MR. LONG: May we approach at side bar, your

0

1 DR. CASTLEMAN - DX BY MR. LONG 549

2 Honor?

3 THE COURT: I think it is about time for a  
4 morning recess, anyway. Members of the jury, about  
5 fifteen minutes.

6 (Jury excused at 10:48 p.m.)

7 MR. LONG: I wanted to make a statement on the  
8 record.

polito trial transcript 11-21-03

THE COURT: Yes.

MR. LONG: I was under the impression that there had been a ruling already that since these documents were not being sought to be introduced for the truth of the matter asserted but only to serve as potential notice to anyone who was working with asbestos products that they could be dangerous, that at least some of the content was admissible.

THE COURT: Was that in a motion in limine?

MR. LONG: I thought it was.

MR. FLYNN: I don't believe so, I don't believe a ruling to that extent, no.

(Discussion held off the record.)

THE COURT: I don't think the order comports with what my notes indicate.

MR. FLYNN: I submitted it to plaintiff's attorney, so obviously your ruling, whatever you

11

DR. CASTLEMAN - OX BY MR. LONG

550

decide, but both sides reached it, so I don't know.

THE COURT: Well, I don't understand.

MR. FLYNN: That order has been reviewed by both sides, but obviously it is subject to your approval is what I'm trying to say.

THE COURT: What I'm saying is the proposed order simply reserves until the time of trial, and

polito trial transcript 11-21-03

9 that's not what my notes indicate.

10 MR. FLYNN: Okay, as you may recall the day I  
11 did the argument, I was standing at the podium, and  
12 there were a lot of arguments going on, and I was  
13 trying to get clarification of the ruling after.

14 THE COURT: Was there an agreement on that  
15 issue?

16 MR. FLYNN: I don't believe there was on that  
17 motion. There were quite a few agreements, but that  
18 one required some ruling or reservation until the  
19 time of trial.

20 THE COURT: My notes indicate it was denied, but  
21 the -- I'm going to have to look -- if you have the  
22 motion itself, because I think the question is to  
23 what extent -- are medical and scientific treatise  
24 and periodicals and pamphlets asserted to demonstrate  
25 notice, to what extent it may be utilized, and I

0

1 DR. CASTLEMAN - DX BY MR. LONG 551  
2 don't think it was necessarily addressed.

3 MR. THACKSTON: If your Honor gets to it, I do  
4 have a response to Mr. Long's assertion, but I will  
5 save that.

6 THE COURT: What's your assertion -- what's your  
7 response to his assertion?

polito trial transcript 11-21-03

8 MR. THACKSTON: Your Honor, my response is the  
9 witness is supposed to be here to say this article  
10 appeared in the medical literature this year. NOW,  
11 when he -- and perhaps here's the title of the  
12 article, and here's where it was published, but when  
13 he starts saying that they recommended this, or they  
14 recommended that, then he's -- he is giving  
15 interpretations, industrial hygiene, and medical  
16 interpretations of those articles, which he is not  
17 qualified to give. We had a doctor on the stand  
18 yesterday. They qualified that doctor to talk about  
19 literature.

20 THE COURT: I haven't sustained your objections  
21 on qualifications.

22 MR. THACKSTON: I understand, your Honor, but  
23 the hearsay problem is an expert can rely on hearsay  
24 when it is reasonably relied upon by that expert in  
25 the field. He is not an expert in those fields,

U

1 DR. CASTLEMAN - DX BY MR. LONG 552  
2 industrial hygiene and medicine. He cannot rely on  
3 hearsay. He can only say this article was published,  
4 and this was the name of it, but he can't interpret  
5 the content.

6 THE COURT: I disagree with your -- you're  
7 combining a number of different evidentiary concepts

polito trial transcript 11-21-03

8 in New York, and I don't necessarily agree with your  
9 analysis. The fact of the matter is that whether an  
10 expert or not, he is -- what the substance of what is  
11 contained in an article is hearsay. He has not been  
12 asked to give an opinion, per se, and then -- and  
13 that is where -- if he were asked to give an opinion  
14 on some subject, there might be an issue about  
15 whether the material upon which he relied is the type  
16 that is relied upon by experts in the field,  
17 so-called professional reliability exception in New  
18 York.

19 I don't think -- I think at this point to the  
20 extent that I have sustained your objections, it has  
21 been on grounds of hearsay or, in some instances,  
22 interpretation.

23 MR. THACKSTON: I think when he says that they  
24 said industrial hygiene measures ought to be in  
25 place, and that would take care of this, then he is

R

1 DR. CASTLEMAN - DX BY MR. LONG 553  
2 giving his interpretation, and therefore his opinion  
3 about the content of the article.

4 I think if they want to lay the article down,  
5 and he can say this is what they wrote --

6 THE COURT: Mr. Thackston, that may be true, but

7           polito trial transcript 11-21-03  
8           more basic, assuming it is not an interpretation, it  
9           is relating what is contained in a document. That's  
          hearsay.

10           MR. THACKSTON: You're exactly right, your  
11           Honor.

12           MR. LONG: My position --

13           MR. THACKSTON: I'm overcomplicating things.

14           MR. LONG: My position is, your Honor, it is not  
15           hearsay. We are not offering it for the truth of the  
16           matter asserted. Our burden is to prove there was  
17           sufficient information available for anyone who cared  
18           to look at it prior to 1948 to conclude that asbestos  
19           could cause disease. And if Dr. Castleman is  
20           prevented from talking generally about what the  
21           authors report, there's no way I can establish the  
22           defendants are on notice.

23           I think it is admissible perhaps with a limiting  
24           instruction, saying the plaintiff is not offering  
25           this to prove that you had to educate a worker to a

U

1                           DR. CASTLEMAN - DX BY MR. LONG                           554  
2           sane appreciation of the risk, just that's what this  
3           man published, and it is there for notice purposes  
4           only.

5           THE COURT: Well, if it is not being offered for  
6           the truth of what is contained, what's the relevance?



polito trial transcript 11-21-03

7 MR. LONG: The notice issue, your Honor, that  
8 there were certain information out there, in public  
9 libraries, that everybody had access to it.

10 THE COURT: But if it's not being offered for  
11 the truth, what is the value of the notice?

12 MR. LONG: You don't necessarily have to include  
13 that Merewether was correct and what he published  
14 constituted the last word on that particular issue.  
15 What I'm saying is, anybody reading it would say to  
16 themselves, "He, this guy is saying you have to  
17 control dust in the work place and tell the worker it  
18 is dusty. That's something we should think about in  
19 formulating our policy going forward."

20 I'm not offering it for asserting it for the  
21 truth of the matter. Just he had this out there as a  
22 principle of public hygiene that anybody reading the  
23 article could have taken into consideration in  
24 formulating their policy.

25 THE COURT: You may be able to independently

n

1 DR. CASTLEMAN -- DX BY MR. LONG 555  
2 introduce that evidence. I don't know how, but  
3 theoretically by establishing when something was  
4 published, perhaps there's some documentary  
5 exception, but you're having in this case -- in this

6           polito trial transcript 11-21-03  
7           instance, you're having a witness relate what is  
8           contained in an article.

9           MR. LONG: I agree, but not -- we are not saying  
10          that it is necessarily truthful. The jury can reject  
11          all of it if they want to.

12          THE COURT: I'm sure, Mr. Long, you have had  
13          numerous other cases involving the same issue, so  
14          during the recess, if you have some case law, just  
15          give it to me.

16          (Recess taken from 10:55 a.m. to 11:25 a.m.)

17          THE COURT: I apologize for the delay. Counsel,  
18          the record should reflect that there had been a  
19          motion on limine in this issue, and my records  
20          indicate that the Court had denied the motion, and I  
21          have signed an order to the effect that the motion in  
22          limine seeking an order prohibiting plaintiff from  
23          making any direct or indirect reference to the  
24          medical and scientific treatises, periodicals and  
25          pamphlets listed on plaintiff's exhibit list is  
            denied without prejudice to making appropriate

n

1                   DR. CASTLEMAN - DX BY MR. LONG                   556  
2           objections at the time of trial. I signed that  
3           order.

4                   However, that does not resolve the issue.  
5           because we are back -- the objections have now been

polite trial transcript 11-21-03

6 made. I have reviewed some federal case law  
7 submitted by Mr. Long. Those cases occur to be based  
8 upon Federal Rules of Evidence, and again, if there  
9 was any New York law supporting the admission, I will  
10 certainly review that authority.

11 MR. LONG: I have no cases from the New York  
12 State Courts, your Honor. I would like to note the  
13 citations of the two cases that I gave you for the  
14 record, as well as a third one that I have in my  
15 hand, because I think the Court is erring in  
16 preventing us from getting into the -- some of the  
17 substance of the articles.

18 The case I have in my hand is entitled In re:  
19 Joint Eastern and Southern District Asbestos  
20 Litigation. It is an eastern -- it is reported as a  
21 United States District Court case, Eastern and  
22 Southern District of New York, 1991. It was found at  
23 762 Fed. Supp. 519. This case, interestingly enough,  
24 was a Weitz and Luxenberg case, in which there was a  
25 defense verdict. Weitz and Luxenberg appealed, and

1 DR. CASTLEMAN - DX BY MR. LONG 557  
2 the defense verdict was upheld.

3 The Court spends a lot of time talking about the  
4 favorable state of the art evidence that was admitted

5 politico trial transcript 11-21-03  
6 by the defendant in this case and cites certain  
7 passages from some of the articles that are going to  
8 come up today, and then at the end, they cite with  
9 approval the charge of the jury, which includes such  
10 statements as this: should have known means, as I  
11 have told you, that a manufacturer or distributor is  
12 held to that level of knowledge which experts had and  
13 the level of knowledge which was available to or  
14 could have been obtained by an expert in view of the  
15 state of medical and scientific research and  
16 literature during the period of plaintiff's exposure  
17 to a particular defendant's product.

18 Under the circumstances, a defendant is charged  
19 with the knowledge and information, if any, that  
20 would have been revealed had it conducted a more  
21 thorough investigation within the parameters of  
22 scientific feasibility of the time and is liable for  
23 its failure to take adequate steps to warn of the  
24 potential nature of the harm in that event.

25 It is our position that the jury cannot  
possibly --

8

1 DR. CASTLEMAN - OK BY MR. LONG 558

2 THE COURT: By the way, I don't necessarily  
3 disagree with that statement. I think that's a  
4 correct statement, and indeed, I had denied the

polito trial transcript 11-21-03

5 motion in limine to preclude, in effect, state of the  
6 art evidence.

7 The issue is an evidentiary issue, is how you  
8 introduce that proof, and the specific --  
9 specifically, should you be permitted to have a  
10 witness testify verbally as to what he -- first of  
11 all, as to what he observed or read in some  
12 literature, and then further, the import or the  
13 conclusions drawing therefrom in summary form.  
14 That's the essence of the objection, and I will be  
15 happy to review any authority, New York authority  
16 permitting such.

17 MR. LONG: Just so the record is clear, I do not  
18 intend, and I told Dr. Castleman that I did not want  
19 him to render his interpretations of these articles  
20 before the jury, merely to repeat whatever it was  
21 from the article that he considered to be important  
22 in helping the jury to assess whether there was  
23 sufficient information available to the defendants to  
24 trigger the responsibility to test their product  
25 further, and perhaps warn.

1 DR. CASTLEMAN - DX BY MR. LONG

SS9

2 THE COURT: And I think you have been -- you  
3 have elicited from him the fact these articles were

polito trial transcript 11-21-03  
published, the subject of the articles, the specific  
subject of the studies, but then beyond that, it --  
it is difficult to distinguish between his  
interpretation and actually reporting what was  
contained in the article, and I think that's the  
trouble we have had.

MR. LONG: The only other way I could do that  
would be to put the article on the screen and publish  
it for the jury, which seems to me to create a worse  
case of hearsay than having the doctor repeat to the  
jury what few passages in each article he finds are  
instructive on this particular issue. And I think  
the jury cannot possibly assess whether the defendant  
is liable or not without this evidence, and the  
authors are dead. I can't call Merewether to say  
what he said; he's dead. I can't think of any other  
way that we could possibly put the notice issue  
before the jury than to either publish the article  
itself or have the doctor testify about what's in the  
article.

So at this point, since I don't have any other  
alternative, I will request leave to publish the

n

DR. CASTLEMAN - DX BY MR. LONG 560  
articles themselves.

MR. THACKSTON: We would object to that. The

polito trial transcript 11-21-03

4 articles are hearsay. That's the problem in the  
5 first place.

6 THE COURT: Well, they may -- I think you need  
7 to establish a foundation to do that, Mr. Long, and  
8 I'm not sure you can do it through this witness. I  
9 mean all -- as I understand it, all he did was --  
10 he's read the articles.

11 MR. LONG: well, Judge, you are repeating  
12 Mr. Thackston's position, which apparently is that  
13 nobody except a doctor or certified industrial  
14 hygienist is qualified to testify in an asbestos  
15 case.

16 THE COURT: No, that's --

17 MR. LONG: This man has a doctorate in public  
18 health. These are public health documents he's  
19 referring to. I can't imagine anybody who has more  
20 expertise to comment on this than Dr. Castleman, who  
21 has written a document on this very topic.

22 THE COURT: You're missing the point. Why isn't  
23 it hearsay?

24 MR. LONG: It is not offered for the truth of  
25 the matter asserted, as I have said over and over

0

1 DR. CASTLEMAN - DX BY MR. LONG 561  
2 again. We are showing it was available to be looked

polito trial transcript 11-21-03  
3 at, and a company who is responsible for testing  
4 their product to make sure it is safe is supposed to  
5 keep abreast of all the medical and scientific  
6 developments with respect to their product as they  
7 become available to them.

8 Therefore it is not -- I'm not asking the jury  
9 to conclude Dr. Merewether was right, merely he made  
10 this comment, and if the defendants had looked at his  
11 article and said, "We manufacture a brake that people  
12 are exposed to, because it creates dust, maybe we  
13 should be wetting down the product and putting a  
14 warning on the box." The jury may accept that was  
15 something the defendants should be charged with the  
16 responsibility to do, and I don't see it as being as  
17 offered for a matter of -- the truth of the matter  
18 asserted at all.

19 THE COURT: Well, it is 11:30. I will be glad  
20 to send the jury to lunch, and if you want to do some  
21 research, give me some law.

22 MR. LONG: There is no research to be done. The  
23 George case is the seminal case. I completely  
24 disagree it does not represent New York law. I think  
25 the Court is committing error by not following

0



polito trial transcript 11-21-03

3           been objected to before. Therefore it can't go up on  
4           appeal, because it's never been an appellate issue.

5           THE COURT: Bring in the jury.

6           (Jury present at 11:37.)

7       BY MR. LONG:

8           Q. Let me return to the Merewether and Price publication  
9           of 1930 for a minute or so. Do you have an opinion regarding  
10          whether that particular publication provided notice to a  
11          manufacturer or distributor of an asbestos product that it was  
12          important to control the dust that was being created by a use  
13          of such a product and to advise the user of the product of a  
14          sane appreciation of its risk?

15          MR. THACKSTON: Objection.

16          THE COURT: Sustained.

17          MR. LONG: To the question yes or no, does he  
18          have an opinion?

19          THE COURT: Well, the — that's not necessarily  
20          relevant, unless the opinion is elicited, and I will  
21          sustain the objection.

22          Q. Do you know who Dr. Legge was?

23          A. Yes.

24          Q. Has he published anything prior to 1948 which  
25          addressed the issue of asbestos and disease?

11

2           polito trial transcript 11-21-03  
3           A. Yes.

4           Q. What did he publish?

5           A. He published a textbook on occupational diseases in  
6 1934. He was the first medical inspector of factories with the  
7 factory inspector in England.

8           MR. THACKSTON: Your Honor, excuse me, I object  
9 to the responsiveness. The question was what did he  
10 publish, not who was he.

11           THE COURT: Overruled.

12           Q. Go ahead, Doctor.

13           A. Dr. Legge's book discussed asbestosis as an old  
14 problem in 1934.

15           MR. THACKSTON: Objection, your Honor, move to  
16 strike.

17           THE COURT: I will permit it. Overruled.

18           Q. In 1935, are you familiar with a publication of a  
19 physician named Paige, P-a-i-g-e?

20           A. Yes.

21           Q. Did he write an article on asbestos and disease?

22           A. Yes, it was published in the American medical  
23 literature.

24           Q. Do you recall the specific subject of the article?

25           A. I recall one subject, a clerical worker with  
asbestosis in an asbestos plant being among the cases before.

0

polite trial transcript 11-21-03

2 not production worker, but clerical worker.

3 MR. THACKSTON: objection to responsiveness.

4 THE COURT: overruled.

5 Q. Doctor, do you have an opinion regarding whether the  
6 Paige article which addressed the issue of asbestosis in a  
7 clerical worker provided notice to a manufacturer or  
8 distributor of asbestos that a bystander or someone who was not  
9 working directly with an asbestos product could get sick?

10 MR. THACKSTON: objection.

11 Q. By being in the vicinity of someone who was?

12 MR. THACKSTON: objection.

13 THE COURT: Sustained.

14 MR. THACKSTON: Your Honor, also, object to any  
15 further commentary disguised as a question, leading  
16 question.

17 THE COURT: No, overruled. Mr. Thackston, you  
18 object to specific questions, and I will make rulings  
19 on your objections.

20 Q. Doctor, were there any other publications in 1935  
21 about asbestos and disease that you consider noteworthy?

22 A. Yes.

23 Q. Can you tell us which one or ones?

24 A. Yes, there were articles published by Gloyne in  
25 England and by Lynch and Smith in the United States.

n

polite trial transcript 11-21-03  
DR. CASTLEMAN - DX BY MR. LONG

565

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q. The subject of them was what?

A. Lung cancer and asbestosis in the same individuals, individuals who had developed asbestosis, but who had also developed cancer of the lung. These were the first case reports published in the medical literature about occupational cancer from asbestos.

Q. Doctor, do you have an opinion regarding whether those publications that you just talked about in 1935 put a manufacturer or distributor of an asbestos product on notice that cancer could result from working with asbestos?

MR. THACKSTON: objection.

THE COURT: Sustained.

Q. Did Dr. Donnelly write another article in 1936?

A. Yes, he did.

Q. What was the subject of that?

A. More cases of asbestosis in the Carolinas among asbestos plant workers, and the issue of compensation for them, the disability and disease.

Q. Who were Egbert and Geiger?

A. They were doctors at Yale University School of Medicine.

Q. Did they publish on this topic?

A. They did.

Q. What was the specific nature of their publication, the

polito trial transcript 11-21-03

DR. CASTLEMAN - DX BY MR. LONG

566

1

2 subjects?

3

4 A. A case of lung cancer and asbestosis, published in  
5 1936 in the American medical literature.

6

7 Q. Are you familiar with a German physician named  
8 Nordmann?

9

10 A. Yes.

11

12 Q. Did he publish on this particular topic, that is the  
13 relationship between asbestos and disease?

14

15 A. Yes, he did.

16

17 Q. In what year?

18

19 A. 1938.

20

21 Q. In what country?

22

23 A. Germany.

24

25 Q. Did he ever publish in the United States?

26

27 A. The article was the subject of an abstract in the  
28 United States; that is to say there was a several paragraph  
29 study published in the Journal of Industrial Hygiene in the  
30 United States of Nordmann's article which was titled, "The  
31 Occupational Cancer of Asbestos Workers."

32

33 Q. Who were Drs. Holcomb and Angrist?

34

35 A. They were doctors in the New York -- in the State of  
36 New York. They published a report in 1942 in the archives of  
37 pathology.

38

39 Q. The subject of which was what?

D

polito trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 567

2 A. Two cases of lung cancer in combination with  
3 asbestosis in asbestos pipe coverers, insulation workers, uses  
4 of asbestos insulation products.

5 Q. Doctor, do you have an opinion regarding whether the  
6 Holcomb and Angrist publication provided notice to a  
7 manufacturer or distributor of an asbestos product that lung  
8 cancer could occur in end use -- in end users of asbestos as  
9 opposed to plant workers?

10 MR. THACKSTON: Objection.

11 THE COURT: Sustained.

12 Q. Did you know a doctor named Bill Hueper?

13 A. Will Hueper, yes.

14 Q. Did you know him personally?

15 A. I did. I visited him on a number of occasions. I was  
16 30, and he was 82 when we first met.

17 Q. Did he publish a paper in 1942 on the topic of  
18 asbestos and disease?

19 A. He published a nine hundred page book in 1942 which  
20 included a short section on -- several pages on asbestos and  
21 cancer of the lung. The book was about occupational cancer.

22 Q. And he was an American physician; is that right?

23 A. He was in the United States. He was trained in  
24 Germany, but he was in the United States from 1929 until he  
25 died in 1978.

polito trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 568

2 Q. For whom did he work?

3 MR. THACKSTON: Objection.

4 THE COURT: I will permit it. Overruled.

5 A. He was the first chief of the environmental cancer  
6 section of the U. S. National Cancer Institute, starting in  
7 1948. previous to that, he had worked for Dupont and for a  
8 drug company.

9 Q. In that paper in 1942, did Dr. Hueper comment at all  
10 on the potential for asbestos to cause cancer?

11 MR. THACKSTON: Objection.

12 THE COURT: Leading, sustained.

13 Q. What did Dr. Hueper say in his 1942 paper that you  
14 considered instructive or noteworthy with respect to the  
15 propensity or the possibility that asbestos could cause  
16 disease?

17 MR. THACKSTON: Objection.

18 THE COURT: Sustained.

19 Q. Did Dr. Hueper publish again after 1942?

20 A. Yes, he published on a number of occasions in the  
21 1940s.

22 Q. And do you recall the names of any of his  
23 publications?

24 A. I think one was called management -- "Industrial  
25 Management and Prevention of Occupational Cancer," something

n

polito trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 569

2 along those lines, in the Journal of the American Medical  
3 Association in 1946; another one on environmental cancer  
4 published in 1943, something with a title like, "The Bulletin  
5 of the American Society for the Prevention of Cancer,"  
6 editorials in the Journal of the American Medical Association,  
7 including one in 1944 on environmental cancer, which was  
8 unsigned but written by Hueper and stood as a statement of the  
9 editor of the journal of the American Medical Association.

10 Q. Do you recall what substances or diseases he included  
11 among his writings on occupational disease?

12 MR. THACKSTON: Objection.

13 THE COURT: I will permit it. Overruled.

14 A. He mentioned occupational cancer from asbestos in all  
15 of these articles.

16 Q. Who was --

17 MR. THACKSTON: Your Honor, move to strike,  
18 object to the responsiveness.

19 THE COURT: I will permit it. Overruled.

20 Q. Who is Dr. Wedler?

21 A. Dr. Wedler was a German physician who published about  
22 asbestosis on a number of occasions, starting in the 1930s.

23 Q. Did he address any particular diseases in his  
24 publications?

25 A. He talked about -- he wrote about asbestosis and



polite trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 570

2 cancers of the lung and the 1943 cancer of the pleura. in  
3 addition to cancer of the lung, all those occupational cancers,  
4 according to him.

5 Q. Occupational cancers resulting from what?

6 A. Asbestos.

7 MR. THACKSTON: objection.

8 THE COURT: overruled.

9 Q. Was the Wedler article on occupational cancers from  
10 asbestos and pleural tumors ever published in the United  
11 States?

12 A. It was originally published in the German literature.  
13 There were abstracts published in the United States, summaries  
14 published in the Industrial Hygiene Digest in 1945 and in the  
15 Journal of Industrial Hygiene I think in November of 1944.

16 Q. Dr. Hueper published in 1946, too; is that right?

17 MR. THACKSTON: objection.

18 A. Yes.

19 Q. Did you already tell us about that?

20 A. Yes.

21 Q. How about a publication in 1947 by Kennaway and  
22 Kennaway, are you familiar with that one?

23 A. Yes, published in a British journal called Cancer.

24 Q. Were they physicians?

25 A. Yes.

polito trial transcript 11-21-03

1 DR. CASTLEMAN -- DX BY MR. LONG 571

2 Q. What was the topic they addressed in their  
3 publication?

4 MR. THACKSTON: I object.

5 THE COURT: I will permit, overruled.

6 A. Industrial causes of cancer were among the things they  
7 discussed.

8 Q. Let's talk a minute about the American College of  
9 Governmental Industrial Hygienists. Are you familiar with any  
10 publications done by them?

11 A. Excuse me, yes.

12 Q. What's the first one that you recall?

13 A. Well, the ones that I was paying attention to were  
14 reports of something called a subcommittee on threshold limits  
15 starting in 1942, and then the publication of what were called  
16 maximum allowable concentrations or threshold limit values  
17 started annually in 1946.

18 Q. Did the paper on threshold limit values include  
19 asbestos as one of the industrial dusts on which they  
20 recommended a threshold limit value?

21 A. Yes.

22 Q. In order to comply with the threshold limit value set  
23 by the ACGIH, how would you comply with that?

24 MR. THACKSTON: Objection.

25 THE COURT: Sustained.

polito trial transcript 11-21-03

1 DR. CASTLEMAN - OK BY MR. LONG 572  
2 Q. Can you comply with a threshold limit value without  
3 taking dust measurements in the area where the exposure is  
4 occurring?  
5 MR. THACKSTON: Objection.  
6 THE COURT: Sustained.  
7 Q. Did the American College of Governmental Industrial  
8 Hygienists address that issue about taking dust measurements?  
9 MR. THACKSTON: Objection.  
10 THE COURT: I will permit it. Overruled.  
11 A. Yes, they specified --  
12 MR. THACKSTON: Your Honor, excuse me --  
13 THE COURT: That answers the question. Thank  
14 you.  
15 Q. Were the threshold limit values commented on in a  
16 paper in 1946 written by Fleisher and Drinker?  
17 A. The one for asbestos was commented on.  
18 Q. What was the subject of the Fleisher-Drinker report?  
19 A. It was a survey of asbestosis in shipyard workers in  
20 the United States, mostly people whose employment had been only  
21 during World War II. It was published in 1946 in the Journal  
22 of Industrial Hygiene.  
23 Q. The authors of that paper reach any conclusions about  
24 the pipe covering trade?  
25 A. They found three cases of asbestosis among people with

polito trial transcript 11-21-03

Q

1 DR. CASTLEMAN - DX BY MR. LONG 573  
2 more than 20 years in the trade, cases described as moderate  
3 and advanced, and they wrote the conclusion that -- it said  
4 they wrote four conclusions, one recommending dust control for  
5 band saw, cutting, grinding and cement mixing. They published  
6 exposure measurements showing high levels of exposure from  
7 these activities, and in the end they said since they found  
8 only three cases of asbestosis in this work force, they didn't  
9 think that insulation work was particularly hazardous.

10 Q. Did you agree with that conclusion?

11 A. That's what they wrote.

12 MR. THACKSTON: Objection.

13 THE COURT: Sustained.

14 Q. Doctor, after Wedler's publication in 1943, were there  
15 any other papers or articles of any kind prior to 1948 that  
16 concerned mesothelioma?

17 A. Yes, there was a -- a publication by Mallory and his  
18 coworkers in the New England Journal of Medicine, very widely  
19 available medical journal in this country.

20 Q. When Mr. Thackston spoke to the jury on Monday or  
21 Tuesday, he suggested that the disease mesothelioma was first  
22 discovered, first named in the 1950s. Is that historically  
23 accurate as far as your review of the literature is concerned?

24 MR. THACKSTON: Objection, your Honor.

25 THE COURT: Well, sustained. It is leading and

polito trial transcript 11-21-03

n

1 DR. CASTLEMAN - DX BY MR. LONG 574  
2 It is improper to ask the question about counsel's --  
3 counsel's opening.  
4 Q. Are you familiar with an author named Osborne from the  
5 state of Connecticut?  
6 A. Yes.  
7 Q. Did he publish anything that you reviewed regarding  
8 the relationship between asbestos -- I'm sorry, the  
9 relationship between brake linings and creation of dust from  
10 brake linings?  
11 A. Yes.  
12 Q. When was that done?  
13 A. 1934. It was a government report in the State of  
14 Connecticut.  
15 Q. And what was the topic of the paper?  
16 MR. THACKSTON: Objection.  
17 THE COURT: Permit it, overruled.  
18 A. It was a government reported annual -- I think an  
19 annual report of the -- the state department of labor and  
20 industries, and they talked about inspections they had done,  
21 including one in a plant where brake linings were made.  
22 MR. THACKSTON: Your Honor --  
23 THE COURT: I will permit it. Overruled.  
24 Q. Were you finished with your answer?  
25 A. No.

polito trial transcript 11-21-03

0

1 DR. CASTLEMAN - DX BY MR. LONG 575  
2 Q. Go ahead, please.  
3 A. They talked about the dust exposures and said that --  
4 THE COURT: I will sustain then.  
5 Q. Did Dr. Lanza publish on the topic of brake and clutch  
6 plant workers in 1935?  
7 A. He did.  
8 Q. And what was the topic on which he published?  
9 A. He was describing asbestosis --  
10 MR. THACKSTON: Excuse me, Judge, he asked about  
11 the topic. He said yes, and now he's asked him to  
12 repeat what was in the article.  
13 THE COURT: No, the question was and what was  
14 the topic on which he published.  
15 MR. THACKSTON: objection to anything other than  
16 the topic, not a description of the article.  
17 THE COURT: The answer wasn't finished, so I'm  
18 not --  
19 MR. THACKSTON: I'm sorry, your Honor?  
20 THE COURT: Why don't you ask the question  
21 again.  
22 Q. What was the topic on which he published?  
23 A. He was publishing about asbestosis in a number of  
24 plants, including a brake plant.  
25 Q. Also in 1935, are you familiar with a publication by a

polito trial transcript 11-21-03

U

1 DR. CASTLEMAN - DX BY MR. LONG 576

2 man named Fulton?

3 A. Yeah.

4 Q. Was he a doctor or a layman?

5 A. I'm not sure. There were four authors.

6 Q. To that particular --

7 A. They were government -- state government officials in  
8 the State of Pennsylvania.

9 Q. And the subjects of their publication was what?

10 A. Survey of asbestosis in asbestos plants in  
11 Pennsylvania. I think four plants were included in the study.  
12 Twenty-five percent of the workers had asbestosis. At least  
13 one of the plants was a brake plant.

14 MR. THACKSTON: Your Honor, I object to the  
15 response.

16 THE COURT: Overruled.

17 Q. In 1939 was there a publication by Dr. George which  
18 addressed the issue of asbestos and disease?

19 A. Yes.

20 Q. Beyond that general subject, what were the topics that  
21 Dr. George addressed in his paper?

22 A. Asbestosis in workers making asbestos -- automotive  
23 brakes containing asbestos.

24 Q. Who was Dr. Moses Stone?

25 A. He was another American physician who published on a

polito trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 577  
2 rather large number of cases of asbestosis in brake lining  
3 manufacturing plant workers in 1940 in this country.  
4 Q. And how about Dr. Brockman (phon)?  
5 A. Brockman was a German physician.  
6 MR. THACKSTON: I object to anything after that.  
7 Q. Did Dr. Brockman --  
8 THE COURT: I'm not sure.  
9 MR. LONG: I will ask another question.  
10 MR THACKSTON: The pattern is who was he, and  
11 it's who he was and everything he ever did. I object  
12 to anything --  
13 THE COURT: Well, no, I think he's going to ask  
14 him when he published.  
15 Q. When did Dr. Brockman publish on the subject of  
16 asbestosis and disease?  
17 A. He published an article in 1941. I think it was  
18 titled "Asbestos in Brake Grinders."  
19 Q. In what country?  
20 A. Germany.  
21 Q. Was that publication ever republished in the United  
22 States?  
23 A. Yes, it was the subject of an abstract published in  
24 English.  
25 Q. In what year; do you recall?



polito trial transcript 11-21-03

1 DR. CASTLEMAN - DX BY MR. LONG 578

2 A. I think 1942.

3 Q. And are you familiar with a man named Castrop?

4 A. Yes.

5 Q. Are you familiar with any publications that he wrote  
6 on the issue of the creation of dust from the use of asbestos  
7 products?

8 MR. THACKSTON: Objection, leading.

9 THE COURT: Sustained.

10 Q. Did Mr. Castrop publish anything in 1948 on the topic  
11 of asbestos dust?

12 A. Yes.

13 Q. Beyond the general topic of asbestos dust, was there  
14 anything specific he addressed in his paper about dust from  
15 asbestos?

16 MR. THACKSTON: Objection, your Honor.

17 THE COURT: Overruled.

18 MR. THACKSTON: Calls for hearsay.

19 Q. He was the industrial hygienist for General Motors,  
20 and he wrote about dust and fume hazards in the industry,  
21 including asbestos hazards from such things as grinding and  
22 surfacing of brake linings as part of the manufacturing  
23 process. It was published in National Safety News, the  
24 bulletin of the National Safety Council, which many large  
25 companies were members of.

polito trial transcript 11-21-03

0

1 DR. CASTLEMAN - DX BY MR. LONG 579

2 THE COURT: I will strike the last -- you are  
3 going to object?

4 MR. THACKSTON: I object, your Honor, not  
5 responsive.

6 THE COURT: I will strike the last part of the  
7 answer.

8 Q. What were trade organizations, Dr. Castleman?

9 MR. THACKSTON: Objection.

10 THE COURT: Overruled at this point.

11 A. Trade associations are associations of companies that  
12 are in similar business, type of business activity. Every type  
13 of business has trade associations. They get together for such  
14 information as standardization of products and grading of  
15 products, like asbestos textiles, for example, just so there's  
16 a common language in the industry of what each company is  
17 selling. And they also sometimes talk about health hazards.

18 Q. And you--

19 MR. THACKSTON: Object to the responsiveness,  
20 your Honor.

21 THE COURT: Overruled.

22 Q. In your research on asbestos and disease, did you  
23 discover articles in any trade association publications?

24 A. Yes, there was -- yes, I did.

25 Q. Such as what organizations?

polito trial transcript 11-21-03

n

1 DR. CASTLEMAN - DX BY MR. LONG 580  
2 MR. THACKSTON: Objection, your Honor.  
3 THE COURT: Time, when?  
4 Q. Before 1948.  
5 A. Well the --  
6 MR. THACKSTON: Your Honor, I have an objection  
7 to the question, your Honor, even limited to 1948.  
8 THE COURT: Grounds?  
9 MR. THACKSTON: No evidence, no relevant  
10 evidence in this case. It is relevant -- relevance,  
11 at this point.  
12 THE COURT: Overruled.  
13 Q. Doctor.  
14 A. Well, the chemical industry trade association was  
15 called the Manufacturing Chemists' Association, and in '45  
16 or '46, maybe both years, they published a manual on warning  
17 labels for different types of hazards associated with the use  
18 of chemical products.  
19 Q. Are you familiar with an organization called the  
20 Industrial Hygiene Foundation?  
21 A. Yes.  
22 Q. Prior to 1948, did you review any possible indications  
23 from the Industrial Hygiene Foundation which addressed the  
24 issue of asbestos and disease?

polito trial transcript 11-21-03  
25 A. Yes.

1 DR. CASTLEMAN - DX BY MR. LONG 581  
2 Q. How many were there?  
3 MR. THACKSTON: Your Honor, objection.  
4 THE COURT: Overruled.  
5 A. Probably between ten and twenty-five abstracts,  
6 talking about abstracts they published in the industrial  
7 hygiene digests, which went to libraries like the Johns Hopkins  
8 Medical Library. It went to member companies, companies that  
9 were members of the Industrial Hygiene Foundation, including  
10 some of the defendants.  
11 Q. Well, in your research did you learn whether any of  
12 the defendants in this case, Chrysler, Ford or General Motors,  
13 were members of the IHF?  
14 MR. THACKSTON: Objection.  
15 THE COURT: Sustained.  
16 Q. Are you familiar with an organization called the  
17 National Safety Council?  
18 A. Yes.  
19 Q. What was the National -- or what is the National  
20 Safety Council?  
21 A. The National Safety Council was set about around 1912  
22 mainly to -- as a first effort by heavy industry, primarily in  
23 this country, to deal with the problem of accident prevention.  
24 By the 1930s, they were also quite concerned with industrial

polito trial transcript 11-21-03

25   dusts and health hazards associated with industrial dusts,

n

1                                   DR. CASTLEMAN - DX BY MR. LONG                                   582

2   including asbestos, and this is reflected in the publication.

3       Q. And were the publications available to non-members?

4       A. Sure.

5       Q. How so?

6       A. Well, they were in libraries. The National Safety  
7   News, for example, was in medical libraries -- was in  
8   scientific libraries, libraries, general libraries, university  
9   libraries.

10      Q. Did any of the -- well, first of all, were the  
11   publications from the National Safety Council abstracts or full  
12   articles, both or neither?

13      A. They were full articles, for the most part. That  
14   included annual conference proceedings as well, that have what  
15   they call national safety congresses. Every year they would  
16   meet, and they would publish the proceedings and send copies of  
17   these proceedings to member companies. In the 1930s, as I say,  
18   they talked about asbestos repeatedly.

19      Q. Did any of the articles in the thirties in which they  
20   talked about asbestos also address the relationship between  
21   asbestos and disease?

22      A. Yes, they talked about asbestosis and dust control.

23      Q. Doctor, are you familiar with a publication entitled

24                   polite trial transcript 11-21-03  
24   industrial medicine?

25           A. Yes.

0

1                   DR. CASTLEMAN - DX BY MR. LONG                   583

2           Q. How are you familiar with that?

3           A. It's one of the reference sources that I used in my  
4   research. It is basically the journal of the Company Doctors'  
5   Association in the United States, and I think it started in the  
6   19 -- early 1930s.

7           Q. Have you actually reviewed the publications  
8   themselves?

9           A. Oh, yeah.

10          Q. Do you know whether the publications themselves  
11   indicate whether any of the defendants in this case, Chrysler,  
12   Ford or General Motors, are members of that organization that  
13   publish the journal called Industrial Medicine?

14               MR. THACKSTON: Objection.

15               THE COURT: Sustained.

16          Q. Do you know who is on the publishing committee of the  
17   Industrial Medicine publication?

18               MR. THACKSTON: objection.

19               THE COURT: Sustained.

20          Q. Do the members of the organization that publish  
21   Industrial Medicine and the people who were on the publication  
22   committee actually appear in the journals themselves?

23           A. Yes.

polito trial transcript 11-21-03

24 Q. Doctor, what significance, if any, do workers'  
25 compensation statutes and legal decisions have, in your

1 DR. CASTLEMAN - DX BY MR. LONG 584  
2 opinion, with respect to providing notice that asbestos could  
3 cause disease?

4 MR. THACKSTON: Objection.

5 THE COURT: Sustained.

6 Q. Prior to 1948, did any states have enacted as law  
7 workers' compensation laws which included asbestosis as a  
8 compensable disease?

9 MR. THACKSTON: Objection.

10 THE COURT: Sustained.

11 Q. In your research, Doctor, have you seen any reported  
12 court decisions, not workers' compensation decisions now, which  
13 address compensation -- before 1948 -- for people exposed to  
14 asbestos and developing disease?

15 MR. THACKSTON: Objection.

16 THE COURT: Sustained.

17 MR. THACKSTON: Object to the line of  
18 questioning.

19 THE COURT: I don't take objections to a line of  
20 questioning. I take objections to the specific  
21 questions, and I will rule on the specific  
22 objections.

polito trial transcript 11-21-03

23 MR. THACKSTON: Thank you.

24 Q. Do you have an opinion, Dr. Castleman, regarding  
25 whether prior to 1949, producers and sellers of asbestos brake

1 DR. CASTLEMAN - CK BY MR. THACKSTON 585  
2 products were on notice that use of the products and creation  
3 of dust from the products could cause disease?

4 MR. THACKSTON: objection.

5 THE COURT: Sustained.

6 MR. LONG: No further questions.

7 THE COURT: Mr. Thackston.

8 MR. THACKSTON: Is this a good time?

9 THE COURT: Yes, we will recess at 12:30.

10 CROSS-EXAMINATION

11 BY MR. THACKSTON:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. This is certainly not your first time to testify in  
15 court, is it, sir?

16 A. No.

17 Q. Now, in fact, you have testified in court over two  
18 hundred and fifty times, haven't you, sir?

19 A. In the last twenty-five years.

20 Q. And you have given so many depositions, you don't know  
21 what the count is anymore?

22 A. I have been subjected to approximately three hundred